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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 HIDDEN EMPIRE HOLDINGS, LLC;
12 a Delaware limited liability company;
13 HYPER ENGINE, LLC; a California
limited liability company; DEON
TAYLOR, an individual,

14 Plaintiffs,
15 v.

16 DARRICK ANGELONE, an
individual; AONE CREATIVE, LLC
formerly known as AONE
17 ENTERTAINMENT LLC, a Florida
limited liability company; ON CHAIN
18 INNOVATIONS, LLC, a Florida
limited liability company,

19 Defendants.

Case No. 2:22-cv-06515-MWF-AGR
Action Filed: September 12, 2022

Assigned to Honorable
Judge Michael W. Fitzgerald

**DEFENDANTS' MEMORANDUM
OF POINTS AND AUTHORITIES
IN OPPOSITION TO PLAINTIFFS'
MOTION FOR ORDER TO SHOW
CAUSE WHY SANCTIONS
SHOULD NOT BE IMPOSED
AGAINST DEFENDANTS**

DATE: March 18, 2024
TIME: 10:00am
DEPT: 5A

[Filed Concurrently with Opposition to
Request for Judicial Notice; Declaration
of Sandra Calin; and Declaration of
Derrick Angelone]

23
24 TO THIS HONORABLE COURT AND TO EACH PARTY AND THEIR
25 ATTORNEYS OF RECORD:

26 COMES NOW, Defendants DARRICK ANGELONE, AONE CREATIVE,
27 LLC and ON CHAIN INNOVATIONS, LLC, by and through their attorneys of
28 record, and submit their Opposition to Plaintiffs' Motion for Order to Show Cause Re

1 Sanctions.

2 This Opposition will be based upon the attached Memorandum of Points and
3 Authorities, together with the records, papers, and files of the within matter and such
4 other evidence, both oral and documentary, as may be presented at the time of the
5 hearing of the Motion.

6

7 DATED: February 26, 2024

KRAMER, DEBOER & KEANE

8

9 By:

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11 JEFFREY S. KRAMER
12 SANDRA CALIN
13 Attorneys for Defendants
14 DARRICK ANGELONE, AONE
15 CREATIVE, LLC, and ON CHAIN
16 INNOVATIONS, LLC

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This case presents the unique situation in which the two sides, the Plaintiffs on the one hand, and the Defendants on the other, have diametrically opposed versions on the facts of the case. But rather than litigating the issues and allowing a trier of fact to decide the case, Plaintiffs seek to circumvent that process, and are essentially asking the Court to find in their favor, under the guise of this Motion which alleges that Defendants violated a Preliminary Injunction ordered by the Court. Although Plaintiffs attempt to convince the Court by their more than 450 pages of exhibits that Plaintiffs' position is correct, the Court should believe the Plaintiffs, and grant the extreme terminating sanction requested, in fact the purported evidence submitted does not make Plaintiffs' case. The Plaintiffs' "evidence" asks the Court to draw certain inferences that are not supported, and raises many questions of authenticity, assumptions and disputed facts that cannot be taken at face value.

15 Plaintiffs essentially are asking to circumvent the due process of properly
16 litigating this case, presenting evidence to a jury that allows for cross-examination of
17 witnesses, and seeks this Court to summarily find in Plaintiffs favor based on
18 supposed “evidence” that comes from the Internet, the World Wide Web, where
19 something found today is gone tomorrow and something completely different has
20 taken its place.

21 The inquiry with respect to all aspects of Plaintiffs' Motion comes down to
22 whether Mr. Angelone committed the alleged acts detailed in the Motion, or are
23 Plaintiffs simply attempting to deprive Defendants of a full determination of the case
24 on its merits, without the ability to cross-examine witnesses and present expert
25 testimony regarding the complex, amorphous world of the Internet.

II. PROCEDURAL STATUS OF THE CASE

Plaintiffs seek to convince the Court that Defendants violated the Preliminary Injunction issued on September 30, 2022. That Preliminary Injunction enjoined the

1 Defendants with respect to four categories of conduct regarding various social media
 2 domains, social media accounts, email/workspace accounts and web accounts, to
 3 transfer to Plaintiffs access, control, ownership and/or registration of the accounts and
 4 to refrain from certain conduct with respect to a video game based on the movie
 5 "Fear." The latter does not seem to be an issue in the subject motion.

6 On October 13, 2022, Mr. Angelone filed a Declaration with this Court
 7 demonstrating compliance with the Court's Order for Preliminary Injunction. That
 8 Declaration is attached as Exhibit "2" to the Declaration of Darrick Angelone, filed
 9 concurrently herewith, in Opposition to the instant motion.

10 At Plaintiffs' request, a Stipulation was recently filed with the Court, and
 11 granted, to continue the trial in this case, from June 11, 2024 to December 10, 2024.
 12 As is documented in the Declaration of Sandra Calin, filed concurrently herewith,
 13 Defendants propounded discovery consisting of Interrogatories and Requests for
 14 Admissions to Plaintiffs on December 19, 2023. Several extensions to respond were
 15 granted to Plaintiffs, and the responses are now due on March 7, 2024. No depositions
 16 have been taken in this case.

17 Plaintiffs have submitted their expert reports, and Defendants will be
 18 submitting their expert's rebuttal report. As is discussed in the Declaration of Sandra
 19 Calin, a draft report is attached as Exhibit "1" which addresses the allegations in the
 20 Declarations of Plaintiffs' experts Erin Burke and Alex Izen. As is also explained in
 21 the Declaration of Sandra Calin, this is a draft report and the final report will be filed
 22 with the Court one day late, on February 27, 2024.

23 In order to determine the issues raised by the instant motion the parties will
 24 require at least an evidentiary hearing that will allow for cross-examination of
 25 witnesses, and which will allow for a full exploration of the issues raised.

26 **III. ANGELONE DID NOT DELETE HEFG'S GOOGLE WORKSPACE
 27 ACCOUNT**

28 Plaintiffs' Motion is replete with inferences and conjectures regarding the

1 deletion of the Google Workspace Account, and based on the report of Rick Watts,
 2 there is no dispositive evidence that the Google Workspace Account was deleted by
 3 Mr. Angelone. It is Mr. Watts' opinion that there is no factual basis for Ms. Burke's
 4 opinion that Mr. Angelone deleted the Google Workspace account. In fact, Mr. Watts
 5 has presented evidence that Mr. Angelone did not have the requisite privileges to
 6 delete the account. Again, Plaintiffs would have this Court find, based on Plaintiffs'
 7 inconclusive evidence, that Defendants deleted the Google Workspace account.

8 The cases cited by Plaintiff in the Motion involve concrete facts that are easily
 9 proven. Deletion of a recorded telephone conversation [*Compass Bank v. Morris*
 10 *Cerullo World Evangelism*, 104 F.Supp.3d 1040 (S.D. Cal 2015)], which is a concrete
 11 record, is vastly different from the alleged deletion of a Google Workspace account.
 12 Again, however, based on the Declaration of Darrick Angelone, and the report by
 13 Rick Watts, when the Google Workspace account was supposedly deleted, Mr.
 14 Angelone was no longer an administrator of the account and accordingly could not
 15 have deleted it.

16 The law regarding spoliation of evidence is not the issue here, but whether Mr.
 17 Angelone was, in fact, the person who deleted the Workspace. Plaintiffs' Motion
 18 cites the Declaration of Mr. Angelone of October 13, 2022 for the proposition that he
 19 "had administrator privileges for this account" (Dkt. 28-1, ¶ 10), however in looking
 20 at Paragraph 10 of Mr. Angelone's Declaration, there is nothing to suggest that on
 21 October 10, 2022 he still had administrator privileges. In fact, Exhibit F to that
 22 declaration contains an email from Mr. Angelone to Google Workspace Support dated
 23 September 29, 2022 which states: "I have agreed to give
 24 roxanne@hiddenempirefilmgrou.com administrator privileges... but I am unable to
 25 because my administrator privileges have been revoked. Please advise how we can
 26 facilitate this with upmost [sic] quickness. I have advised Roxanne as well. Thank
 27 you."

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1 Plaintiffs cannot show by a preponderance of the evidence that Mr. Angelone
 2 deleted the Google Workspace account, and therefore he cannot be held accountable
 3 to spoliation of evidence.

4 **IV. ANGELONE DID NOT HAVE CONTROL OVER THE NINE HEFG
 5 DOMAINS**

6 Defendants are cognizant of this Court's Minute Order of September 30, 2022,
 7 in which the Court noted that based on the evidence submitted at that time, the Court
 8 found the Plaintiffs' version of the facts more credible. Defendants respectfully
 9 request that the Court consider the objective evidence as presented by both Plaintiffs'
 10 expert FTI, and Defendants' expert Quandary Peak, and reconsider its view of the
 11 evidence. Again, Mr. Watts' report refutes the contentions of Ms. Burke that Mr.
 12 Angelone had access to the Icelandic domains, and the Declaration of Darrick
 13 Angelone also disputes that he has every used the name "Jacky Jasper."

14 **V. TRANSFER OF THE TWO SOCIAL MEDIA ACCOUNTS**

15 Plaintiffs also contend that Defendant failed to transfer two social media
 16 accounts, Twitter and Instagram. Again, the Declaration of Darrick Angelone filed
 17 with the Court on October 13, 2022 clearly addresses this issue, as does the report of
 18 Rick Watts.

19 **VI. DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT**

20 Plaintiffs seek the very severe sanction of finding Defendants in contempt and
 21 requesting essentially terminating sanctions. Defendants respectfully urge the Court
 22 to deny the Motion and find that Defendants should not be held in contempt. The
 23 cases cited by Plaintiffs in their Motion are all fact specific, and the Court in each case
 24 found that based on the specific facts of each case whether there was civil contempt.
 25 It is clear that in order to hold a party in civil contempt, the Court must find that the
 26 party "(1) ... violated the court order, (2) beyond substantial compliance, (3) not based
 27 on a good faith and reasonable interpretation of the order, (4) by clear and convincing
 28 evidence." *In re Dual-Deck Video Cassette Recorder Antitrust Litigation*, 10 F.3d

1 693, 695. However, as the Court in that decision also stated, “[t]his set of rules is
 2 easy to articulate but difficult to apply. We must determine, under a restrained
 3 standard of review, whether the district court could properly determine” the
 4 aforementioned four factors. *Id.* In that case, the United States Court of Appeals for
 5 the 9th Circuit determined that it could not do so, and reversed the contempt order.

6 In looking at the facts in the case at bar, Plaintiffs do not have “clear and
 7 convincing evidence” that Mr. Angelone violated the Preliminary Injunction.
 8 Although Plaintiffs make multiple claims of egregious conduct by Mr. Angelone,
 9 none of them are substantiated by the evidence offered. Given the early stage of this
 10 litigation, Defendants are entitled to a determination on the merits of the case, and a
 11 finding in favor of Plaintiffs at this stage would violate Defendants’ due process
 12 rights.

13 All of the cases cited in Plaintiffs’ Motion involve cases at much later stages of
 14 litigation, after discovery, dispositive motions or trial. None of the cases found
 15 contempt before any discovery had taken place. Defendants respectfully ask this
 16 Court to provide Defendants the ability to receive responses to their written discovery
 17 and take depositions of the parties to establish that Plaintiffs do not have any sound
 18 grounds to prevail in this case.

19 **VII. ANGELONE DID NOT DELETE HEFG’S GOOGLE WORKSPACE
 20 AND THEREFORE DID NOT ENGAGE IN SPOILIATION OF EVIDENCE**

21 The crux of the inquiry with respect to spoliation of evidence is again an
 22 analysis of the evidence provided and a factual determination of whether Mr.
 23 Angelone did, in fact, delete the Plaintiffs’ Google Workspace. As is documented in
 24 the Declaration of Darrick Angelone, and also substantiated by the report of Rick
 25 Watts, Mr. Angelone did not delete the Google Workspace account. On the date that
 26 the Google Workspace account was allegedly deleted, October 10, 2022, Mr.
 27 Angelone was no longer the administrator for the Workspace. He had made Roxanne
 28 Taylor the administrator on October 6, 2022, and therefore he no longer had access to

1 the Workspace. Although Plaintiffs' Motion attempts to suggest otherwise, in fact
 2 there is absolutely no evidence to show that Mr. Angelone deleted the account. Using
 3 Plaintiffs' logic, it could just as easily be argued that Ms. Roxanne Taylor deleted it.

4 **VIII. THE SANCTIONS REQUESTED ARE NOT APPROPRIATE OR 5 WARRANTED**

6 The cases cited by Plaintiffs to support their request for terminating sanctions
 7 are, again, fact specific, and none of the cases in which terminating sanctions were
 8 approved remotely resembles the facts in the case at bar. *McComb v. Jacksonville*
 9 *Paper Co.*, 336 U.S. 187 (1949) involved failure to comply with minimum wage laws;
 10 In *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991) the Court approved sanctions
 11 consisting of assessing attorney fees for bad-faith conduct; *Nostalgia Networks, Inc.*
 12 *v. Rayle*, 56 Fed.Appx. 344 (9th Cir. 2003) is an unpublished case that imposed a
 13 default judgment for repeated and willful failures to attend a deposition and other
 14 discovery abuses; *Anheuser-Busch, Inc. v. Natural Beverage Distributors*, 69 F.3d
 15 337 (9th Cir. 1995) was an appeal of a partial grant of summary judgment.

16 In *The Sunrider Corp. v. Bountiful Biotech Corp.*, 2010 WL 4590766 at *27
 17 (C.D. Cal. Oct. 8, 2010), the Court discussed at length the imposition of terminating
 18 sanctions and stated: "In determining whether to impose a case-dispositive sanction
 19 for failure to comply with discovery orders, a district court should consider the
 20 following five factors: (1) the public's interest in expeditious resolution of litigation;
 21 (2) the court's need to manage its docket; (3) the risk of prejudice to the party seeking
 22 sanctions; (4) the public policy favoring disposition of cases on their merits; and (5)
 23 the availability of less drastic sanctions." [Citations omitted.] The Court further stated
 24 at *32: "Any sanction imposed under Rule 37(b) or the court's inherent power must
 25 be 'just' and, in order to comport with due process principles, must specifically relate
 26 to the particular claim or defense that was at issue in the order to provide discovery."
 27 This case involved, again, violations of discovery and allegations of perjury.

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1 Of significance in all of the cases cited by Plaintiffs, is that they arose well into
 2 the litigation, either regarding the conduct of discovery or after discovery was
 3 completed. In the case at bar, Plaintiffs seek to terminate the action before any real
 4 discovery has taken place. Defendants have served written discovery on Plaintiffs,
 5 have granted several extensions for responses to the discovery, but have not yet
 6 received responses. There have been no depositions taken in the case. The issues
 7 raised by the instant motion go to the heart of allegations raised by both Plaintiffs and
 8 Defendants/Third Party Plaintiffs: who did what to whom. This requires the conduct
 9 of discovery, depositions and presentation of evidence. Simply relying on
 10 Declarations that are filled with inuendo, unsubstantiated inferences and assumptions
 11 falls far short of the requirement to dispose of cases on their merits.

12 In *RG Abrams Insurance v. Law Offices of C.R. Abrams*, 342 F.R.D. 461 (C.D.
 13 Cal Nov. 2, 2022) the Court considered at length the issues of imposition of sanctions
 14 and particularly terminating sanctions. Although the Court found that the Defendants
 15 engaged in misconduct, the Court declined to impose the drastic sanction of
 16 terminating the case. As the Court stated at *512, “a dismissal or default judgment is
 17 a ‘drastic’ sanction that only may be invoked if the party’s noncompliance is due to
 18 ‘willfulness, fault, or bad faith.’ [Citations.]” Defendants respectfully urge the Court
 19 that no such conduct can be attributed to Defendants, and after discovery has taken
 20 place, depositions taken and the issues fully litigated, it will be shown that Defendants
 21 did not act with “willfulness, fault, or bad faith.” However to decide that now, based
 22 solely on the unsubstantiated “evidence” presented, would be patently unjust to
 23 Defendants.

24 Similarly, with respect to the imposition of fines, while cases do award
 25 monetary sanctions in appropriate cases, this is also a case-specific inquiry. For
 26 example, in *Citronelle-Mobile Gathering, Inc. v. Watkins*, 943 F.2d 1297 (11th Cir.
 27 1991) the Court found that the defendants were in contempt of court for various
 28 actions, including unreasonably interfering with a Receiver’s attempts to enforce an

1 order, wrongfully converting money and other funds and wrongfully converting
2 proceeds from an aircraft sale. These are all concrete, easily established facts that can
3 be proven with concrete evidence. The allegations as to Defendants herein are vastly
4 different and hinge on alleged actions involving the Internet, which are not easily
5 established and require thorough investigation.

6 The compensatory fines requested by Plaintiffs herein are for their attorneys'
7 fees in the action to date. No other evidence is presented regarding the amounts
8 sought as compensatory damages. Unless the Plaintiffs prevail, they are not entitled
9 to attorneys' fees. Again, Plaintiffs are attempting to circumvent due process, without
10 a hearing on the merits and without the opportunity to cross-examine witnesses, and
11 ask the Court to award them attorneys' fees of over \$600,000. This, without
12 additional evidence, is clearly unjust.

13 IX. CONCLUSION

14 Based on the foregoing, and the Declarations filed concurrently herewith,
15 Defendant respectfully request that the Court deny the Motion for an Order to Show
16 Cause Why Sanctions Should Not be Imposed Against Defendants. Plaintiffs have
17 not shown by a preponderance of the evidence that Defendants have violated the
18 Preliminary Injunction or that Defendants have engaged in Spoliation of Evidence.
19

20 DATED: February 26, 2024

KRAMER, DEBOER & KEANE

21
22
23 By:

24 JEFFREY S. KRAMER
25 SANDRA CALIN
26 Attorneys for Defendants
27 DARRICK ANGELONE, AONE
28 CREATIVE, LLC, and ON CHAIN
INNOVATIONS, LLC

CERTIFICATE OF SERVICE

I am employed in Los Angeles County, California. I am over the age of 18 and not a party to this action; my business address is 21860 Burbank Blvd., Suite 370, Woodland Hills, CA 91367. My email address is ynelson@kdeklaw.com.

I certify that on February 26, 2024, I served: **DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFFS' MOTION FOR ORDER TO SHOW CAUSE WHY SANCTIONS SHOULD NOT BE IMPOSED AGAINST DEFENDANTS** on the following parties or counsel of record as follows:

<p>LAWRENCE HINKLE (SBN 180551) STEPHANIE JONES NOJIMA (SBN 178453) JOSHUA ROY ENGEL SANDERS ROBERTS LLP 1055 West 7th Street, Suite 3200 Los Angeles, CA 90017 Telephone: (213) 426-5000 - Facsimile: (213) 234-4581 E-Mail: lhinkle@sandersroberts.com; sjonesnojima@sandersroberts.com; jengel@sandersroberts.com;</p>	<p><i>Counsel for Plaintiffs</i></p>
<p>Justin Kian, Esq. J.T. Fox, Esq. LAW OFFICES OF JT FOX, APC 556 S. Fair Oaks Avenue, Suite 444 Pasadena, California 91105 Telephone: (888) 750-5530 - Fax: (888) 750-5530 Email: jt@jtfoxlaw.com; justin@jtfoxlaw.com</p>	<p><i>Co-Counsel for Defendants</i></p>

By ECF/CM: I electronically filed an accurate copy using the Court's Electronic Court Filing ("ECF") System and service was completed by electronic means by transmittal of a Notice of Electronic Filing on the registered participants of the ECF System.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct. Executed at Santa Clarita, California on February 26, 2024.

/s/ Yolanda Nelson
Yolanda Nelson